

**Minutes**  
**WARRICK COUNTY AREA BOARD OF ZONING APPEALS**

Regular meeting to be held in the Commissioners Meeting Room,  
Third Floor, Historic Courthouse,  
Boonville, Indiana  
December 17, 2018 at 6:00 P.M.

**PLEDGE OF ALLEGIANCE**

**MEMBERS PRESENT:** Jeff Valiant, Chairman; Terry Dayvolt, Mike Moesner, Jeff Willis, and Mike Winge.

Also present were Morrie Doll, Attorney, Sherri Rector, Executive Director, Molly Barnhill, and Kim Kaiser, staff.

**MEMBERS ABSENT:** Doris Horn and Paul Keller

**MINUTES:** Chairman asked if everyone had received a copy of the minutes for November.

Mrs. Barnhill stated the minutes weren't completed.

Mrs. Rector stated it was just a short time since the last meeting and the staff was trying to get them all done. She said they would be at the next regular meeting.

**BZA-V-18-22**

**APPLICANT & OWNER:** Randall & Sara Kuebler

**PREMISES AFFECTED:** Property located on the S side of Shiloh Road approximately 1500 feet W of the intersection formed by Shiloh Rd. and Ashby Rd. Owen Twp. 29-4-7. 1777 Shiloh Rd. Complete legal on file.

**NATURE OF CASE:** Applicant requests a variance from the requirements as set forth in the Comprehensive Zoning Ordinance in effect for Warrick County, IN to allow the construction of a Single Family Dwelling on a property with an existing residence in an "A" Agricultural Zoning District. (*Advertised in The Standard December 6, 2018*)

Randy and Sara Kuebler were present.

The Chairman asked for a staff report.

Mrs. Rector stated we have all of the return receipts for the certified mail from the applicants. She said the applicants do own 6.75 acres with an existing cabin that they are residing in. She said they want to build a new home as you can see on the attached plot plan. She stated the variance was to allow them to remain in their cabin until their house was completed. She added they did wish to keep the cabin on their property once they are moved into the new residence.

She said they didn't want to tear it down; it was sitting on the lake and they would like to keep it as a lake house. She stated they knew they had to remove any cooking facilities from the cabin so it would be like a guest house, which you can have on property as long as you don't have a full kitchen. She stated they are requesting to build a home with an existing residence and let the other residence remain as a cabin only and not as a residence. She added anytime they would want to make it into a residence they would have to go through the proper subdividing of the property. She stated the application was in order.

The Chairman asked the applicants if they had anything they wanted to add.

The Kuebler's replied no.

Mike Moesner asked when they projected to have everything done.

Mrs. Kuebler replied they hadn't even started yet.

Mr. Kuebler stated they were talking about breaking ground next spring or summer and then within a year after they break ground.

Mrs. Rector asked them if they knew that they had to obtain their permit and start within six months of the variance being granted, then you have two years to complete the house.

The Kuebler's replied yes.

Ascertaining there were no questions from the Board or any remonstrators the Chairman called for a motion.

I, Mike Moesner, make a motion to approve the Variance Application based upon and including the following findings of fact:

1. The grant of the Variance will not be injurious to the public health, safety, morals, and general welfare of the Community. As such, it is further found that the granting of the Variance shall not be materially detrimental to the public welfare.
2. The use or value of the area adjacent to the property included in the Variance will not be affected in a substantially adverse manner. As such, it is further found that the granting of the Variance shall not result in substantial detriment to adjacent property or the surrounding neighborhood.
3. The need for the Variance arises from some condition peculiar to the property involved. The peculiar condition constituting a hardship is unique to the property involved or so limited to such a small number of properties that it constitutes a marked exception to the property in the neighborhood. Such condition is there is an existing cabin they are living in and once the new home is completed, it would be returned to a guest house.

4. The strict application of the terms of the Warrick County Comprehensive Zoning Ordinance will constitute a practical difficulty, unusual and unnecessary hardship if applied to the property for which the Variance is sought.
5. The approval does not interfere substantially with the Warrick County Comprehensive Zoning Ordinance adopted pursuant to IC 36-7-4-500 et seq.
6. The granting of the Variance is necessary in order to preserve a substantial property right of the petitioner to use the property in a reasonable manner, and not merely to allow the petitioner some opportunity to use his property in a more profitable way or to sell it at a greater profit.
7. That the hardship to the applicant's use of the property was not self-created by any person that had an interest in the property nor is the result of mere disregard for or ignorance of the provisions of the Warrick County Comprehensive Zoning Ordinance.
8. The approval of the requested Variance is the least modification of applicable regulations possible so that the substantial intent and purpose of those regulations contained in the Warrick County Comprehensive Zoning Ordinance shall be preserved.
9. This Variance shall expire six (6) months after this date, UNLESS a Permit based upon and incorporating this Variance is obtained within the aforesaid six (6) month period or unless the provision of the Variance are adhered to within the aforesaid six (6) month period. Upon advance written application for good cause, a renewal for an additional six (6) month period may be granted by the Secretary of the Area Plan Commission.
10. The Variance Application is subject to the terms contained therein and the plans on file subject to the following additional conditions:
  - a) Subject to an Improvement Location Permit being obtained.
  - b) Subject to a Building Permit being obtained.
  - c) Subject to the property being in compliance at all times with the applicable zoning ordinances of Warrick County.
  - d) Subject to all utility easement and facilities in place.
  - e) Subject to the cabin meeting the definition in the Comprehensive Zoning Ordinance of a guest house.

Motion was seconded by Mike Winge and unanimously carried.

Mrs. Rector stated normally the approval would be done on Wednesday; however, they are moving us into our back storage room tomorrow onto fold up tables, so we have no copier or

printer at this time and are not sure when they will be up and running tomorrow. She asked if they would call the office on Wednesday and see where we are with the approval.

Mrs. Kuebler replied okay.

Mrs. Rector stated it would be done this week she just wasn't sure when.

Mr. Kuebler asked if they did decide to tear the cabin down did they have to do anything.

Mrs. Rector stated just tell us then you would need to get a demolition permit from the Building Department and then they would verify to us that it had been removed. She added for your own information you will need to notify the Assessor's office that it had been removed, so they could remove it from your taxes.

#### **BZA-SU-18-14**

**APPLICANT:** Liberty Mine, LLC by Alex Messamore, Manager Land Acquisition and Permits  
**OWNER:** Alcoa Fuels Inc, Alcoa Warrick LLC, H&L Farms LLC, Lackehart, Inc C/O Donald H. Keith, Hart, Hart, Peake & Robertson, Tweedy Farms Trust.

**PREMISES AFFECTED:** 2,720 acres located on the South side of New Harmony Rd and 796 acres located on the South side of Millersburg Rd approximately 1 mile northwest of the intersection formed by Eskew Rd and Millersburgh Rd. Boon & Ohio Twp.

**NATURE OF CASE:** Applicant requests a Special Use, SU 13, for the requirements as set forth in the Comprehensive Zoning Ordinance in effect for Warrick County, IN to allow mineral extraction, storage, and processing in an Urban Area in a "CON" Conservancy & Recreational Area and "A" Agricultural Zoning District. (*Advertised in the Standard July 5, 2018.*) *Continued from July 18, 2018 and August 24, 2018, September 24, 2018, October 22, 2018, and November 26, 2018.*

Mrs. Rector stated Liberty Mine LLC by Alex Messamore, Manager Land Acquisition and Permits, owner Alcoa Fuels, Inc, Alcoa Warrick LLC, H&L Farms LLC, Lackehart, Inc C/O Donald H. Keith, Hart, Hart, Peake & Robertson, and Tweedy Farms Trust. She said Morrie would give an update.

Attorney Doll stated the applicants have informed him that they had not reached an agreement yet. He said a hearing was held with the Special Judge presiding over the litigation that was parallel to the application. He stated that all of the original parties had reached an agreement and had stipulated to an agreement to the court late last week except H & L Farms, represented by Anthony Long, which objected. He said the Judge set a time frame for the cutoff for objection to be filed for the court proceeding, which if he recalled correctly was the 28<sup>th</sup> of December 2018. He stated they asked again to continue this until after they think the first week of January, to give the Special Judge the opportunity to rule on the stipulation to see if they have an agreement or they do not have an agreement. He said then to appear at the regular meeting before the BZA Board again in January.

Mike Moesner asked if it comes time for a January meeting and that was the only item on the agenda does the Board show up.

Mrs. Rector replied the bad part was they don't even tell them until 4:30 or 5:00 p.m.

Attorney Doll stated he would stress to the applicant again that they needed a better communication channel with them and try to give them a deadline of the Friday prior to the Monday meeting to inform him if it was a go or no go. He said obviously if it were the only thing on the agenda then they probably wouldn't have a meeting unless there was something else that Sherri needed to do.

Chairman Valiant asked if there was anything filed for January now.

Mrs. Rector replied no. She said she didn't know when the deadline was.

Mrs. Barnhill stated it was December 26, 2018.

Mrs. Rector asked what day the January meeting was.

Mrs. Barnhill replied January 28, 2019.

Mike Moesner stated it's that late then.

Attorney Doll stated that is a good question though.

Mrs. Rector asked if the Board still had to be there to vote to continue it or at least some of them.

Attorney Doll replied yes, they should be.

Mike Winge asked where that left the Board.

Mrs. Rector stated that left you coming back in January.

Mike Winge stated he meant on for when they were going to continue it.

Jeff Willis asked if they could continue it until the February meeting to give them plenty of time.

Chairman Valiant stated that was what he wondered.

Attorney Doll stated that was up to the Board.

Mike Winge made a motion to continue BZA-SU-18-14 until the January no February regular meeting.

Mrs. Rector asked which one.

Mike Winge stated they would have theirs done before that.

Attorney Doll asked what the motion was; February's meeting or January's meeting.

Mike Winge stated they are meeting on the... they would not have time to get it to us by January.

Attorney Doll stated they were supposed to have an answer from the court by the end of the first week of January, like January fourth or fifth but he had no idea if that would happen or not or what the decision would be when it was entered. He added that decisions by the court are appealable for 30 days, so even if it came on the fourth day of January it may not be a final appealable order until February fourth or fifth.

Mike Moesner stated then the Board shouldn't bring it up until the February meeting.

Mike Winge agreed.

Mrs. Rector asked him if that was his motion.

Mike Winge replied yes.

Mike Moesner said he would second it.

Chairman Valiant said he had a motion and a second to continue BZA-SU-18-14 until the February 25, 2019 meeting.

The motion was seconded by Mike Moesner and unanimously passed.

### **ATTORNEY BUSINESS:**

Attorney Doll stated the Board had been sued again. He said Mr. Hendrickson had filed a judicial review petition with the Circuit Court concerning American Land Holdings of Indiana LLC A/K/A Peabody Coal and their Special Use, which the Board recently approved in November. He said it was filed, he believed, on Friday, which would have been timely. He stated the office had 30 days to prepare a transcript of the tape-recorded meeting minutes.

Mrs. Rector stated she hadn't had a chance to read it yet.

Attorney Doll stated the rules were that they had 30 days to prepare a transcript of the minutes and provide that to the petitioner who then would provide it to the courts. He said it wasn't the same issues as Prime Foods but it was the same procedures. He stated Warrick County had been named and so had American Land Holdings of Indiana LLC.

Mrs. Rector stated they would let them know.

Attorney Doll stated as always don't talk about litigation. He said if the press called them he would rather they refer them to Sherri or himself who would probably say no comment on pending litigation.

Mrs. Rector stated she had sent Mr. Miller, the attorney, a copy of the draft of the minutes because they hadn't been approved. She asked if that was sufficient or do they need to be an approved set.

Attorney Doll stated they needed to be approved.

Mrs. Rector stated they didn't have them tonight so that would be in January.

Jeff Willis stated there wouldn't be a meeting in January.

Attorney Doll asked we don't have them tonight because....

Chairman Valiant stated they weren't sent out.

Attorney Doll stated they couldn't be approved until... He said he guessed they would have to file a draft and propose to the court that we could substitute the final version or certify the final version if there were no changes to it after the February meeting.

Mrs. Rector replied okay.

Chairman Valiant stated there still might be a January meeting where they could be approved but we didn't know yet.

Attorney Doll stated either way the January meeting would come too late.

Chairman Valiant said right. He said let the Board know if they need to do something different on that.

Mrs. Rector stated it would probably be continued anyway.

### **EXECUTIVE DIRECTOR BUSINESS:**

Mrs. Rector stated she only had a few things to talk to Morrie about. She said she wanted to wish everyone a Merry Christmas and a Happy New Year.

Mike Winge made a motion to adjourn the meeting at 6:19 p.m. The second was made by Mike Moesner.

Mrs. Rector asked if Tom Tweedy needed something.

Tom Tweedy asked if he understood correctly that the application for Liberty Mine would be continued until February 25, 2019.

Mike Winge replied yes, to be safe.

The motion passed unanimously.

Mrs. Rector stated Warrick County Economic Development Department had a new attorney. She said at the time the Board approved the Special Use for Friedman Park Tom Kimpel was the attorney. She stated the new attorney Herb Davis called today and the original approved park plans stated it would be a gathering area with two pavilions, two public bathrooms, a playground, a park maintenance building, and paved parking areas in addition to parking areas. She said he called today and they want to build an additional enclosed pavilion in addition to the two open pavilions that were on the plan. She stated he wanted to know if they needed to file an amended application and come back before the Board again for approval. She said she didn't know how big it would be she didn't even think to ask him how large of a pavilion it would be. She stated she didn't know that it would change anything that was out there.

Mike Winge stated as long as he was within boundaries and that kind of thing.

Mrs. Rector stated here was where there was a catch, when these are approved; they are approved in accordance with the application and the plans on file with that application. She added that Dave went out there and they had put in a fishing dock and pier that wasn't on the plans. She said she had mentioned that to him today and he said yes, they did.

Mike Winge stated if they did an amended plan, they could add the dock and everything.

Mrs. Rector replied yes, he could add everything.

Mike Winge stated they could have it all done at one time.

Chairman Valiant said there you have your answer.

Mrs. Rector replied okay.

Mike Winge stated just for the fact that you know it.

Chairman Valiant replied it changed the original plan all together so he didn't see how they could not.

Mike Moesner stated it also established a precedent, if the Board didn't do that...

Mrs. Rector replied yes, because the next time he could come and want a great big large open one again and that was when the remonstrators would come because of the music and all of that. She stated if you remember a few months ago, what was that person's name Rodney what.

Mrs. Barnhill replied Nicholson.

Mrs. Rector said Nicholson; he was out off SR 66.

Jeff Willis stated Yankeetown.

Mrs. Rector replied yes, Yankeetown. She said he put up a tower that was supposed to be for wireless service only. She stated now he had called in and his wireless pole won't catch all of the houses that they wanted so now he wanted to put up 25 to 35 more poles.

Mrs. Barnhill stated no, 25 to 35 feet tall.

Mrs. Rector stated 25 to 35 foot tall poles with antennas on them in different spots on different people's properties.

Attorney Doll asked if they were repeaters.

Mrs. Barnhill stated he said they would be like a light pole.

Mike Winge stated it wouldn't be like a repeater because that was a good-sized unit on them.

Mike Moesner said it was probably some kind of booster.

Mrs. Barnhill stated a receiver and a transmitter.

Attorney Doll said a re-broadcast.

Mrs. Rector asked if that would be treated the same as a wireless tower and he would need to get Special Uses for each one.

Mike Winge stated there might be a lot of people complaining about that.

Jeff Willis said that was like...

Attorney Doll asked 25.

Mike Moesner asked if they were like a wooden light pole.

Attorney Doll asked how many he wanted to build.

Mike Winge replied 25-30 was what they said.

Mrs. Barnhill stated he said he was just getting into the issue that they couldn't reach like a handful of houses so they wanted to stick a pole with some antennas on it.

Mike Winge stated a pole he thought she had said 25 to 30 poles.

Mrs. Barnhill replied no.

Jeff Willis stated they already had a pole they want to extend it 25 to 30 feet.

Mike Moesner said they are just want one pole 25 or 30 feet.

Mrs. Rector replied at this time. She said he had just found out it didn't catch all of the houses so they want to do this. She stated if they do another tower then they would want to stick up more and it might take three or four the next time.

Mike Winge asked if he had talked about extending the one he had or putting another one up.

Chairman Valiant replied the one he already had.

Mrs. Rector stated he told Molly they were like telephone poles.

Attorney Doll stated he wanted to go off site to a distant location and put a 25-foot tall pole with an antenna on the top of it.

Mrs. Rector replied right.

Attorney Doll said so his tower could talk to the pole and the pole would catch the houses with service.

Mrs. Rector replied correct.

Attorney Doll stated that was not even on the same sight. He said he didn't see how that could be considered ancillary he thought he would have to apply for another Special Use.

Mike Winge stated not only that if you gave people the opportunity if they had an issue with it to say something.

Mrs. Rector stated plus they would have to have lease areas and everything else.

Jeff Willis said he had pictured a big generating station that you had at a cell tower.

Mrs. Rector replied no, he said they would like a telephone pole with an antenna on the top of them.

Mike Winge stated that antenna would have to run down to a cable and the cable run to something or whatever they wouldn't be standing there freestanding. He said he would have to run something to it or from it.

Mrs. Rector replied that is true.

Mike Moesner stated not necessarily it may just need electric to pick it up and re-broadcast it. He said that was the way a lot of that stuff worked.

Terry Dayvolt stated that would be like Vectren.

Mike Winge stated that would be like a repeater.

Mrs. Rector asked a Special Use for each one.

Multiple Board members replied yes.

Mrs. Rector stated okay.

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Attorney Doll asked if they had seen the legislature that changed the fall ratio on cell towers.

Mrs. Rector stated she had.

Attorney Doll said they normally asked cell towers to have twice their height in a collapse ratio. He stated the cell tower industry got to the General Assembly and proved to their satisfaction that they didn't need to be twice the distance, they only needed to be one times the height of the tower as the fall zone. He said they had been precluded now if it was a collapsible tower from requiring any more than the height of the tower for an official fall zone in the zoning application to put up cell towers.

Mrs. Rector stated their engineers had to certify to that fall area.

Mike Winge stated he didn't see how they could determine which way the wind would blow or tornadoes or anything else.

Attorney Doll stated they were not going to.

Jeff Willis stated they are supposed to fall in on themselves.

Attorney Doll said the towers are like knuckles and they collapse on themselves.

Mike Winge stated that would depend on whether the wind catches it or not.

Attorney Doll said yes, he knew.

Mike Winge stated that was a theory.

Mrs. Rector stated she had seen some on a Facebook group she belonged to like Hurricane Michael and the things that happened down there. She said they had towers and they went down or bent right over during that hurricane.

Mike Winge stated the cables keep them from going anywhere.

Attorney Doll stated these aren't cabled, they were freestanding towers.

Mrs. Rector stated it was a law that was changed, so the Board would have to change their ordinance also.

Attorney Doll said they needed to state in the ordinance that they are to be in compliance with that section of the Indiana Code. He said that was where all of the regulations were that said the engineer had to certify it to the Board and all of that stuff.

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Mrs. Rector asked Molly if she had printed out something on Schultz Rd.

Mrs. Barnhill replied no, that the office didn't have a printer at that time due to being moved into a different room.

Mrs. Rector replied that was right she couldn't. She said she was finished.

Attorney Doll said okay.

Chairman Valiant stated re-adjourned. Meeting adjourned at 8:31.

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Jeff Valiant

ATTEST:

The undersigned Secretary of the Warrick County Board of Zoning Appeals does hereby certify the above and foregoing is a full and complete record of the Minutes of the said Board at their monthly meeting held December 17, 2018.

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Sherri Rector, Executive Director